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BENITA J ROHM
ROHM & MONSANTO
660 WOODWARD AVENUE
SUITE 1525
DETROIT MI 48226

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In re Application of
Yasuyuki Sekine
Application No. 09/208,696
Filed: December 10, 1998
Attorney Docket No. RM.HPK
Title: DISPLAY FOR GAME AND
GAMING MACHINE

OFFICE OF PETITIONS

DECISION GRANTING PETITION

This is a decision on the petition filed January 7, 2002 to withdraw the holding of abandonment in the above-identified application under 37 CFR §1.8(2)(b), which is properly treated as a petition under 37 CFR §1.181(a), and in the alternative, a petition to revive under 37 CFR §1.137(b).

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed December 26, 2000, which set a shortened statutory period for reply of three (3) months. On June 15, 2001, an after-final amendment was received, along with the appropriate extension of time. On July 10, 2001, an advisory action was mailed to the applicant, indicating that the proposed amendment would not be entered as it did not place the application in better form for appeal. No further amendments were received prior to the expiration of the maximum extendable period of time for submitting a response. Accordingly, the above-identified application became abandoned on March 27, 2001. A Notice of Abandonment was mailed on August 13, 2001.

Petitioner submits that a Notice of Appeal was in fact timely filed and petitions the Office to withdraw the holding of abandonment. Along with the petition, the petitioner has submitted a copy of the Notice of Appeal¹, a declaration from the attorney who signed the original Notice of Appeal attesting to the fact that this Notice of Appeal was indeed deposited in a post office box on June 26, 2001, and a copy of the postcard receipt received from the PTO which indicates that this Notice of Appeal was received on July 2, 2001.

¹ It is noted that the Notice of Appeal contains a Certificate of Mailing dated June 26, 2001, the last day of the maximum extendable period for response.

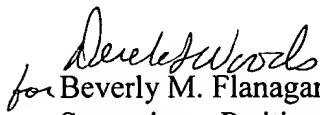
Applicant's postcard receipt is prima facie evidence that the Notice of Appeal was filed on July 2, 2001, but no such paper is present in the file. Hence, it is clear that this Notice of Appeal was mishandled by the Office. Therefore, it is concluded that the Notice of Appeal shown to have been filed by applicant's counsel was received on July 2, 2001, and later misplaced in the Office.

In view thereof, the petition under 37 CFR §1.181(a) is GRANTED². The holding of abandonment is hereby WITHDRAWN.

The Notice of Appeal filed on January 7, 2002 (originally filed on July 2, 2001) has been entered and made of record. Accordingly, **the two (2) month period for filing the Appeal Brief, in triplicate, accompanied by the fee required by law, runs from the mailing date of this decision.**

The application is being forwarded to Technology Center 3700 for processing of the Notice of Appeal.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.


for Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² As the petition under 37 CFR §1.181(a) has been granted, the petition under 37 CFR §1.137(b) is unnecessary, and the corresponding fee has not been charged to petitioner's Deposit Account.